IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

Bail Appl..No. 4728 of 2007()

[CRIME NO.263/2007 OF PUTHUNAGARAM POLICE STATION]

PETITIONERS/ACCUSED:

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1. NARAYANAN, S/O. SUBRAMANIYAN,
   KANNIMARI P.O., PATTAMCHERI, CHITTUR.

2. RAJAN , S/.RAMAKRISHNAN, KANNIMARI P.O.
   PATTAMCHERI, CHITTUR.

3. BASHEER, S/O.SULAIMAN,
   KANNIMARI P.O. PATTAMCHERI, CHITTUR.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT:

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4728 of 2007

Dated this the 6th day of August 2007

O R D E R

Application for anticipatory bail. Petitioners are accused 1 to 3. Altogether there are three accused persons. They face allegations inter alia under Section 308 I.P.C. There is a case and a counter case. The counter case is registered under Section 326 I.P.C. The alleged incident took place on 18/7/2007 at about 6 p.m. The weapon allegedly used is a Koduval. There was an incident between the workers of the Janata Dal and the C.P.M. Both sides have suffered serious injuries. In the crime registered against the members of the C.P.M, allegations under Section 326 I.P.C has been raised. As against the workers of the Janata Dal, who are accused in this case, an exaggerated allegation under Section 308 I.P.C has been included. The learned counsel for the petitioners submits that the allegation under Section 308 I.P.C is raised with vexatious intent - to ensure that the petitioners are kept behind the bars for as long a period as possible. The petitioners were not actually aggressors but only victims of aggression. Because of the political clout which the real offenders (de facto complainant) have in this case [and their political party wields with the police] such false allegations have been raised against the petitioners. In these circumstances, it is prayed that directions under Section 438 Cr.PC may be issued in favour of the petitioners.

2. The learned Public Prosecutor opposes the application. The allegations are serious. The nature of weapons used also indicates the guilty mind. Investigation is in progress. The petitioners may not be permitted to arm themselves with an order of anticipatory bail at this early stage, submits the learned Public Prosecutor.

3. The F.I statement is seen lodged by an independent person in the counter case where it is alleged that the members of the party of the de facto complainant herein had attacked accused 1 to 3.

4. Since the allegation under Section 308 I.P.C is raised, to verify whether such allegations are raised bona fide, the learned Public Prosecutor was requested to read over the nature of the injuries allegedly suffered by the victims in this case. No grievous hurt has been suffered.

5. Taking all the relevant inputs into account, I am satisfied that appropriate directions under Section 438 Cr.P.C can be issued in favour of the petitioners in this case.

6. In the result, this petition is allowed in part. Following directions are issued under Section 438 Cr.P.C in favour of the petitioners.

i) Petitioners shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 13/8/2007. Their application for bail

shall be considered by the learned Magistrate on merits provided sufficient prior notice to such application is given to the learned Public Prosecutor in charge of the case. Appropriate orders shall be passed by the learned Magistrate. The learned Magistrate, while considering the application shall ignore the allegation under Section 308 I.P.C and proceed to pass appropriate orders on merits.

(ii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law, as if these directions were not issued at all.

(iii) If they were arrested prior to 13/08/2007, they shall be released from custody on their executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 13/08/2007.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007